



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 62

[EPA-R01-OAR-2021-0265; FRL-8861-01-R1]

Approval and Promulgation of State Plans for Designated Facilities and Pollutants:

Massachusetts; 111(d)/129 Revised State Plan for Large Municipal Waste Combustors

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving the Clean Air Act State Plan revisions for Large Municipal Waste Combustors (MWCs) submitted by the Massachusetts Department of Environmental Protection (MassDEP) on December 18, 2018. The revised State Plan is in response to amended emission guidelines (EGs) for Large MWCs promulgated on May 10, 2006. MassDEP's State Plan is for implementing and enforcing provisions at least as protective as the EGs applicable to existing Large MWCs. This action is being taken under the Clean Air Act.

DATES: This rule is effective on **[Insert date 30 days after date of publication in the Federal Register]**. The incorporation by reference of certain publications listed in the rule is approved by the Director of the Federal Register as of **[Insert date 30 days after date of publication in the Federal Register]**.

ADDRESSES: EPA has established a docket for this action under Docket Identification No. EPA-R01-OAR-2021-0265. All documents in the docket are listed on the <https://www.regulations.gov> website. Although listed in the index, some information is not publicly available, i.e., confidential business information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available at <https://www.regulations.gov> or at the U.S. Environmental Protection Agency, EPA Region 1 Regional Office, Air and Radiation Division, 5 Post Office Square - Suite 100, Boston, MA. EPA

requests that if at all possible, you contact the contact listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday, 8:30 a.m. to 4:30 p.m., excluding legal holidays and facility closures due to COVID-19.

FOR FURTHER INFORMATION CONTACT: Shutsu Wong, Air Quality Branch, U.S.

Environmental Protection Agency, EPA Region 1, 5 Post Office Square – Suite 100, (Mail Code 05-2), Boston, MA 02109-3912, tel. 617-918-1078, e-mail wong.shutsu@epa.gov.

SUPPLEMENTARY INFORMATION: Throughout this document whenever “we,” “us,” or “our” is used, we mean EPA.

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I. Background and Purpose

On May 20, 2021 (86 FR 27350), EPA published a notice of proposed rulemaking (NPRM) for the Commonwealth of Massachusetts.

The NPRM proposed approval of the Clean Air Act State Plan revisions for Large MWCs submitted by the MassDEP on December 18, 2018. MassDEP revised the Code of Massachusetts Regulations (CMR), specifically at 310 CMR 7.08(2) entitled “Municipal Waste Combustors,” and submitted the revised State Plan in response to amended EGs for Large MWCs promulgated on May 10, 2006. MassDEP's State Plan is for implementing and enforcing provisions at least as protective as the EGs applicable to existing Large MWCs.

Other specific requirements under sections 111(d) and 129 of the Clean Air Act, and the rationale for EPA's proposed action, are explained in the NPRM and will not be restated here. No public comments were received on the NPRM.

II. Final Action

EPA is approving the MassDEP's revised State Plan for existing Large MWCs.

III. Incorporation by Reference

In this rule, EPA is finalizing regulatory text that uses incorporation by reference. In accordance with requirements of 1 CFR 51.5, EPA is finalizing the incorporation by reference of the provisions of 310 CMR 7.08(2), entitled "Municipal Waste Combustors," effective March 9, 2018, excluding the site assignment provisions of 310 CMR 7.08(2)(a), the definition of "materials separation plan" at 310 CMR 7.08(2)(c), and the materials separation plan provisions at 310 CMR 7.08(2)(f)8. These provisions establish emission limitations and requirements for Large MWCs in Massachusetts. In accordance with 5 U.S.C. 552(a), EPA has made, and will continue to make, these documents generally available through <https://www.regulations.gov> and at the EPA Region 1 Office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information). This incorporation by reference is approved by the Office of the Federal Register upon the effective date of this final rule, and the plan is federally enforceable under the Clean Air Act (CAA) as of the effective date of this final rulemaking.

IV. Statutory and Executive Order Reviews

Under the Clean Air Act, the Administrator is required to approve a State Plan submittal that complies with the provisions of the Act and applicable Federal regulations. Clean Air Act sections 111(d) and 129(b); 40 CFR part 60, subparts B and Cb; and 40 CFR part 62, subpart A; and 40 CFR 62.04. Thus, in reviewing state plan submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- Does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, the State Plan is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications and will not impose substantial

direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the *Federal Register*. A major rule cannot take effect until 60 days after it is published in the *Federal Register*. This action is not a “major rule” as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by **[Insert date 60 days after date of publication in the Federal Register]**. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 62

Environmental protection, Air pollution control, Administrative practice and procedure, Incorporation by reference, Intergovernmental relations, Reporting and recordkeeping requirements, Sulfur oxides, and Waste treatment and disposal.

Dated: October 25, 2021.

Deborah Szaro,
Acting Regional Administrator,
EPA Region 1.

For the reasons stated in the preamble, the Environmental Protection Agency amends 40 CFR part 62 as follows:

PART 62—APPROVAL AND PROMULGATION OF STATE PLAN FOR DESIGNATED FACILITIES AND POLLUTANTS

1. The authority citation for part 62 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart W—[Amended]

2. In subpart W, remove the undesignated center heading “Plan for the Control of Designated Pollutants From Existing Facilities (Section 111(d) Plan)”.

3. Revise § 62.5340 to read as follows:

§ 62.5340 Identification of plan.

(a) *Identification of plan.* Massachusetts Plan for the Control of Designated Pollutants from Existing Plants (Section 111(d) Plan).

(b) *Official submission of plan.* Revised State Plan for the control of metals, acid gases, organic compounds and nitrogen oxide emissions from existing municipal waste combustors — as submitted December 18, 2018, by the Massachusetts Department of Environmental Protection. The plan includes the regulatory provisions cited in paragraph (d) of this section, which EPA incorporates by reference.

(c) *Identification of sources.* The plan applies to existing sources in the following categories of sources:

(1) Municipal waste combustors.

(2) [Reserved]

(d) *Incorporation by reference.* (1) The material incorporated by reference in this section was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. You may obtain copies at the EPA Region 1 Regional Office, Air and Radiation Division, 5 Post Office Square - Suite 100, Boston, MA, 617-918-1078 and from the source listed in paragraph (d)(2) of this section. You may also inspect the materials at the National Archives and

Records Administration (NARA). For information on the availability of this material at NARA, email fr.inspection@nara.gov, or go to: www.archives.gov/federal-register/cfr/ibr-locations.html.

(2) Commonwealth of Massachusetts, Massachusetts Department of Environmental Protection. 1 Winter Street, Boston, Massachusetts 02108, 617-292-5500, mass.gov/orgs/massachusetts-department-of-environmental-protection; Code of Massachusetts Regulations (CMR):

(i) 310 CMR 7.08(2): Title 310 — Department of Environmental Protection, chapter 7.00 — Air Pollution Control, section 7.08— U Incinerators, paragraph (2) “Municipal Waste Combustors,” in effect March 9, 2018 (as corrected and revised through August 21, 1998), excluding the following: subparagraph (2)(a) “Site Assignment”; the definition of “materials separation plan” in subparagraph (2)(c); and subparagraph (2)(f)8. “Material Separation Plan”.

(ii) [Reserved]

§ 62.5425 [Amended]

4. In § 62.5425, remove and reserve paragraph (a)(1).

[FR Doc. 2021-23545 Filed: 10/28/2021 8:45 am; Publication Date: 10/29/2021]